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Article III – Requirements Each State Must Accept to Participate

Rule 313. Sourcing for Advertising and Promotional Direct Mail

- 1. General.** For the purposes of sourcing, direct mail which is defined within the definition of “delivery charges” in the Library of Definitions, Part I, of the Agreement, is split into two separate categories and sourced as follows:
- (a) retail sales that include both the sale and delivery of printed advertising and promotional material are sourced under the provisions of Section 313, Direct Mail Sourcing; and
 - (b) retail sales of all other direct mail are sourced under the provisions of Section 310, General Sourcing Rules. This includes retail sales of
 - 1) printed material that is not advertising and promotional material,
 - 2) printed material that is advertising and promotional material which does not include delivery to a mass audience,
 - 3) services for the delivery, but not the sale, of direct mail, and
 - 4) services that result in the sale of printed material that is not advertising and promotional material.

“Printed material that is not advertising and promotional material” includes, but is not limited to the following types of direct mail:

- 1) transactional direct mail that contains personal information specific to the addressee including invoices, bills, statements of account, payroll advices;
- 2) any legally required mailings including privacy notices, tax reports and stockholder reports; and
- 3) other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including newsletters and informational pieces.

Printed material that is not advertising and promotional material is sourced under Section 310 even when advertising and promotional direct mail is included in the same envelope or package.

Example 1. A purchaser contracts with ~~a service provider~~ **Company A** to perform data processing services, print billing invoices, prepare the invoices for mailing, and deliver them to the U. S. Postal Service or other delivery service for delivery to the address on each invoice. Each envelope is mailed to a residential address and contains an invoice and several advertising inserts. The sale is sourced under Section 310 of the Agreement.

Example 2. A printer produces 1,000 copies of an advertising brochure. Under the contract, the printer is required to shrink-wrap the pallet and release the brochures to the custody of a third party. The sale of the printed material is advertising or promotional material, but is not “direct mail” since the seller/printer is not

delivering or distributing the printed material to a mass audience or to addressees on a mailing list at the direction of the purchaser. The sale is sourced under Section 310 of the Agreement.

Example 3. The purchaser in Example 2 contracts with a mail house to fold, insert the advertising brochures into envelopes, and mail them. Since the sale does not include the sale of the printed materials, the sale between the mail house and the purchaser is sourced under Section 310 of the Agreement.

Example 4. A printer produces 100,000 advertising flyers for a purchaser. For this print job, the purchaser requires the printer to ship 1,000 copies of the flyer to 100 stores located in various states that are owned by the purchaser. The flyers will be made available to customers as they enter the store. The flyers are advertising or promotional material, but are not “direct mail,” because multiple items of the same printed material are delivered or shipped to a single address and because the printed materials are delivered to and billed to the recipient (store owner). The sale is sourced under Section 310 of the Agreement.

Example 5. A political candidate contracts with a printer to produce campaign information and solicitations for donations and have them delivered by a delivery service other than the U. S. Postal Service to a mailing list. Each piece is specifically addressed to the recipient. This sale is sourced under Section 313.

2. Sourcing of Printed Advertising and Promotional Materials.

A. Advertising and promotional material defined. Sourcing of “direct mail” under Section 313 is limited to retail sales that include both the printing and delivery or mailing of advertising and promotional material. Section 313.D of the Agreement defines “advertising and promotional direct mail” as printed material that meets the definition of “direct mail,” contained within the definition of “delivery charges” in Appendix C, Part I of the Agreement, the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used herein, the word “product” means tangible personal property, a digital good or a service. “Advertising and promotional direct mail” does not include any direct mail that is not advertising and promotional in nature containing any of the following types of direct mail:

- 1) transactional direct mail that contains personal information specific to the addressee including, but not limited to invoices, bills, statements of account, payroll advices;
- 2) direct mailing of any legally required mailings matter including, but not limited to privacy notices, tax reports and stockholder reports; and
- 3) other non-promotional direct mail delivered to existing or former

shareholders, customers, employees or agents including, but not limited to newsletters and informational pieces.

Sourcing rules do not affect the obligation of a purchaser to remit tax on the use of the product in a jurisdiction and do not take precedence over exemptions provided by state law that apply to the retail sale of a product. Examples of state specific exemptions that may apply to direct mail include exemptions for advertising, promotional materials, shopper's guides, and printed material shipped out-of-state.

B. Purchaser requirements. Section 313 of the Agreement requires the purchaser to provide the seller with either (a) information to show the jurisdictions to which the advertising and promotional direct mail is delivered to recipients, hereinafter referred to as "jurisdictional information," or (b) an exemption certificate claiming advertising and promotional direct mail or direct pay permit as the reason for exemption. The purchaser remains obligated to remit any applicable tax on the printed materials delivered to recipients in jurisdictions where the seller is not required to collect, or for any other reason, does not collect and remit the tax to the appropriate jurisdictions. The purchaser is not required to provide the seller with a list of the specific taxing jurisdictions which might exist with respect to any given address or group of addresses. Purchasers may use a reasonable summary or allocation of the jurisdictions to which the "direct mail" is delivered as described in paragraph D below for purposes of sales or use tax reporting.

Example: A printer produces 5,000 advertising flyers and is responsible for delivering the flyers to addresses on a mailing list provided by the purchaser. 120 of the flyers are to be delivered to zip code 68516-2205 which is within a city and county imposing a local option sales tax. The purchaser may provide the seller with an allocation, by zip code, of where the 5,000 flyers are being delivered so that the seller can determine the appropriate jurisdictions for sourcing. The allocation would indicate that 120 flyers are to be delivered to zip code 68516-2205. The seller will collect tax according to such allocation. The purchaser is not required to identify for the seller the name of the city, county, and state encompassing zip code 68516-2205.

C. Seller requirements. When the purchaser provides jurisdictional information, the seller is required to collect and remit tax based on the jurisdictional information, provided the transaction is subject to sales or use tax in the states of delivery. Nothing in this rule requires the seller to collect or remit any applicable tax for states in which the seller is not registered to collect or remit tax, unless the seller is otherwise required to be registered in that state based on either state or federal law. The seller is relieved of any further obligation to collect tax on the retail sale where the seller has collected tax pursuant to the jurisdiction information provided by the purchaser.

If the purchaser does not provide an exemption certificate claiming advertising and promotional direct mail, direct pay permit, or jurisdictional information for the purchase of printed advertising and promotional materials that meet the definition of direct mail, the seller shall source the retail sale to the address from which the direct mail was shipped in accordance with Section 310, subsection (A)(5) of the Agreement.

D. Jurisdictional information. If the purchaser provides the seller with information at the time of the sale to show the jurisdictions where the advertising and promotional direct mail is delivered to recipients, the seller is responsible for collecting and remitting any applicable sales or use tax to the jurisdictions according to the delivery information provided by the purchaser. The jurisdictional information provided by the purchaser must include sufficient information for the seller to source the retail sale of the advertising and promotional direct mail to the state and local jurisdiction(s), if applicable, in which the materials are delivered or distributed to recipients. The purchaser remains liable for the tax if incorrect or incomplete jurisdictional information is provided to the seller.

The jurisdictional information must be in a form in which such information can be retained and retrieved by the seller for the purpose of sales or use tax reporting. Access to a database which contains address information or a mailing list provided by the purchaser or a third party that does not allow the seller to retain and retrieve the jurisdictional information identifying jurisdictions where the advertising and promotional direct mail was delivered to recipients does not constitute receiving “information to show the jurisdictions to which the advertising and promotional direct mail is delivered”. Sellers are deemed to have sufficient information to source the retail sale to the proper jurisdictions when the seller utilizes an address database or mailing list owned by the seller.

A summary of the distribution or a reasonable allocation of the distribution generated at the time of the sale is acceptable documentation of the advertising and promotional direct mail sourcing for the purpose of sales or use tax reporting. Any reasonable, but consistent and uniform, method of allocation that fairly represents the state and local jurisdictions where delivery or distribution was made to recipients is acceptable. Acceptable allocation methods include:

- 1) allocation based on a state’s population as a percentage of the total population of the distribution area,
- 2) allocation based on the sales volume of store locations within a state as a percentage of the total sales volume of the seller,
- 3) allocation based on a percentage of accounts in a jurisdiction to the total number of customer accounts, and

- 4) allocation among jurisdictions using a system-generated summary distribution report or a purchase order for a mailing list that includes a zip code summary.

The use of the above-listed methods of allocation will be presumed to be reasonable. The burden of proving that such an allocation method does not fairly represent the actual distribution of the printed material in any particular case is upon the states.

Other allocation methods may be used but the burden of showing that the allocation fairly represents the actual distribution of the printed material in that case will be on the party providing that allocation.

- E. Exemption certificate for advertising and promotional direct mail or direct pay permit.** If the purchaser provides the seller with a fully completed exemption certificate claiming advertising and promotional direct mail or direct pay permit as the reason for exemption from tax, or other documentation of direct pay authority, the seller is relieved of the obligation to collect or remit any applicable tax on the retail sale of the product. If such an exemption certificate claiming advertising or promotional direct mail or documentation of direct pay authority is provided to the seller, the purchaser is responsible for self-assessing and remitting any applicable tax to the jurisdictions where the advertising and promotional direct mail is delivered or distributed to recipients.

A printer shall not issue an exemption certificate claiming advertising and promotional direct mail as the reason for exemption from sales/use tax when purchasing component materials such as ink or paper that is used to fabricate or produce printed materials. The exemption certificate claiming advertising or promotional direct mail as the reason for exemption may not be used to purchase printed materials from third parties that are to be included in the mailing or distribution because the printed materials are shipped to a single address.

- F. Other state taxes.** Nothing in this section shall limit a purchaser's obligation for sales or use tax to any state to which the advertising and promotional direct mail is delivered, nor limit a person's ability under law to claim a credit for sales or use taxes legally due and paid to other jurisdictions.